No. 15296

United States Court of Appeals

for the Ninth Circuit

RICHFIELD OIL CORPORATION,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-12-56

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

DAVID GUNTERT,
555 South Flower Street,
Los Angeles 17, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Asst. United States Attorney,
Chief, Civil Division,
600 Federal Building,
Los Angeles 12, California;

KEITH R. FERGUSON,
Special Assistant to the
Attorney General;

GEORGE COUCHRAN DOUB,
Asst. Attorney General;

LEAVENWORTH COLBY,
Sp. Asst. to the Attorney General,
Department of Justice,
Washington 25, D. C.

In the District Court of the United States in and for the Southern District of California, Central Division

In Admiralty No. 19103—BH

RICHFIELD OIL CORPORATION, a Corporation,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

AMENDED LIBEL IN PERSONAM

To the Honorable, the Judges of the Above-Entitled Court:

Libelant Richfield Oil Corporation, owner of certain tanker steamships heretofore time chartered to respondent, the United States of America, pursuant to leave of this Court, files this, its amended libel (hereinafter called "libel"), in a cause of contract, civil and maritime, against respondent, the United States of America, and this, its libel, alleges as follows:

For a First Cause of Action

I.

That at all times herein mentioned libelant Richfield Oil Corporation was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of California, with

its principal place of business at 555 South Flower Street, Los Angeles 17, California. [2*]

II.

That at all times herein mentioned the respondent, the United States of America, was and still is a sovereign which has, by law, consented to be sued herein.

III.

That the Maritime Administration is an agency or instrumentality of the respondent, the United States of America, and has its principal office in Washington, D. C.

IV.

That this suit is brought under the act of March 9, 1920, known as the Suits in Admiralty Act (41 Stat. 525; 46 USCA, 741, et seq.).

V.

That this Honorable Court has jurisdiction of this libel under the provisions of Section 2 of the act of March 9, 1920, known as the Suits in Admiralty Act (41 Stat. 525; 46 USCA, 742).

VI.

That at all times mentioned herein libelant was and still is owner of the American steamship "Charles S. Jones" and that at all times material to this cause of action libelant was the owner of the American steamships "Agwiworld," "Huguenot," "Kekoskee," "Larry Doheny," "Pat Doheny," and "Topila."

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

VII.

That on January 9, 1942, the respondent, the United States of America acquired the SS "Pat Doheny" under Maritime Commission form of charter party as per copy attached, marked Exhibit "A" and by this reference made a part hereof, which said charter party was numbered MCc 2337; and on January 30, 1942, the said respondent acquired the SS "Charles S. Jones" under charter party in like form, numbered MCc 2718. Addendum One to said form of charter party is attached hereto, marked Exhibit "B" and by this reference made a part hereof. [3]

VIII.

That in April, 1942, the respondent, acting through its agency and instrumentality, the War Shipping Administration, requisitioned all of libelant's tankers enumerated in paragraph VI above and prescribed the form of charter party as Form 102 Warshipoiltime, copy of Part II thereof being attached hereto, marked Exhibit "C" and by this reference made a part hereof; that the Form 102 charter parties on said vessels were as follows:

Name of Vessel	Warshipoiltime Contract No.	Date Delivered	Date Redelivered
SS Agwiworld	WSA 1432R	4-19-42	12-3-45
SS Huguenot	WSA 1433R	4-19-42	Title Req. 7-5-43
SS Topila	WSA 1438R	4-19-42	12-14-45
SS Kekoskee	WSA 1468R	4-21-42	11-29-45
SS Larry Doheny	WSA 1470R	4-24-42	Total Loss 10-6-42
SS Pat Doheny	WSA 1644R	4-20-42	12-6-45
SS Charles S. Jones	WSA 1231R	4-20-42	12-3-45

IX.

That from the time of said requisitioning, numerous disputes arose and existed between libelant and other shipowners on the one hand and the respondent, the United States of America, and its agencies and instrumentalities, particularly the War Shipping Administration, on the other hand, concerning the responsibility for overtime of members of the vessels' crews made necessary by reason of orders of the United States Coast Guard requiring the maintenance of additional watchmen and the maintenance of a full complement on board at all times while the vessels were in port.

X.

That an attempt was made by Operations Regulation No. 96, issued May 8, 1944, by the War Shipping Administration, to resolve disputes under Clause 7 of Part II of Warshipoiltime for the overtime required for security watches. In this regard said Operations [4] Regulation 96 reads in part as follows:

"I—Security Watches

"Subject: Instructions Relating to Certain Labor Costs Under Standard Forms of Time Charters.

"Clause 7 of Part II of the standard forms of time charter provides that the charterer will reimburse the owner for wages and bonuses of 'additional watchmen or other personnel employed upon the order or request of any Governmental authority.' The term 'additional' is construed to mean

beyond what would be normal in peacetime. The Administrator has determined administratively that, in port, normally one watchman per vessel is employed on a 24-hour round-the-clock basis for all purposes. It is understood that Governmental authorities have ordered that additional watchmen be on duty for security purposes in various ports here and abroad.

"Costs for such additional security or other watchmen required by order or request of any government, as aforesaid, in excess of such normal costs, will be reimbursed by the War Shipping Administration. Overtime paid to officers and crew, in lieu of employing such additional shore watchmen, to comply with such orders or requests and which would not have been incurred in the absence of such orders, will likewise be reimbursed. The foregoing does not apply to watches maintained in repair yards when the vessel is being repaired or drydocked for owner's account."

XI.

That notwithstanding Operations Regulation No. 96 the said disputes concerning overtime continued as did other disputes involving libelant and other steamship operators, and on December 6, 1944, the War Shipping Administration issued its G.O. 11, Supp. 9, prescribing a Second Disputes Addendum which was supposed to resolve all disputes covered thereby, including disputes concerning [5] overtime; that the Second Disputes Addendum amended

Clause 7 of Part II of Warshipoiltime in part as follows:

"Clause 7A. The Charterer shall reimburse the Owner for its actual out-of-pocket expenses, including all taxes with respect thereto for which the Owner is responsible, for (1) any war bonuses, extra wages based on the areas to be traversed during, or the ports of call of, any voyage hereunder and extra wages arising out of the nature of any cargo carried hereunder, where such bonuses and extra wages are payable by the Owner to the Master, officers or crew in accordance with ship's Articles or the Owner's collective bargaining agreements or decisions of the Maritime War Emergency Board; (2) all wages and bonuses of any extra officers and men beyond the Vessel's normal complement, who are required to be employed because of the Vessel's service under this Charter, or to provide for any persons carried at the request of the United States of America or additional watchmen or other personnel employed upon the order or request of any governmental authority; (3) required payments (including wages) for or in lieu of returning the Master, officers and crew upon delivery of the Vessel under this Charter from the port of delivery to the nearest port at which the crew could be signed off under the articles; and (4) repatriation costs necessarily incurred by the Owner if the Vessel is ordered to trade indefinitely in foreign areas or between foreign ports. Except as otherwise provided in this Charter or insurance provided or assumed by the charterer, repatriation

expenses shall not be for the account of the Administrator, War Shipping Administration, but nothing herein shall prejudice or waive any right of the Owner to recover from the United States for such payments or expenses, under any provisions of statutory law * * *'' [6]

XII.

That libelant, prior to acceptance of the Second Disputes Addendum, entered into an agreement and understanding with the respondent, the United States of America, through its instrumentality and agent, the War Shipping Administration, to the effect that the division of overtime between the charterer and the owner would remain on the basis of the then-audited accounts which libelant was required to maintain for respondent, which said accounts had been audited and approved by the auditors of said respondent. For the convenience of the Court, we are attaching hereto, marked Exhibits "D," "E," "F," "G," "H," "I," and "J," copies of the correspondence and telegrams exchanged indicating said understanding and agreement, which said Exhibits by this reference are made a part hereof as though fully set forth herein.

XIII.

That after said understanding and agreement, libelant continued to maintain said books, records and accounts in accordance with said understanding and agreement, and ultimately the charter parties were terminated, the vessels were redelivered on the dates indicated in paragraph VIII above, and

the accounts between the owner and the charterer were audited, approved and settled.

XIV.

That approximately three years thereafter, in the fall of 1948, the auditors of the United States Maritime Commission, which agency had succeeded to all of the functions of the War Shipping Administration, again audited the books, records and accounts which libelant had maintained during the charter period for respondent and which had been audited, approved and settled as aforesaid, and made claim upon libelant for payment to respondent of numerous amounts, including crew overtime, which were not due charterer under Warshipoiltime, as interpreted by Operations Regulation No. 96 or otherwise, or under the Second Disputes Addendum, [7] or under the understanding and agreement evidenced by Exhibits "D" through "J," inclusive, hereof, or at all.

XV.

That the amount claimed to be due from libelant, as hereinabove alleged, was not at that time completely computed, but respondent estimated the alleged debt would be in the neighborhood of $75,000.00; and respondent's agency, the Maritime Administration, threatened to collect respondent's said claim by seizing funds due libelant from other governmental agencies.

XVI.

That libelant herein, in view of the foregoing facts, and particularly its prior agreement with

the War Shipping Administration, hereinabove alleged, and the renegotiation agreements hereinafter alleged, believed itself aggrieved by the action of the Maritime Administration and its West Coast Director, L. C. Fleming, and sought relief under the Administrative Procedure Act by instituting suit in the United States District Court for the Northern District of California, which case was finally resolved on October 21, 1953, by a decision of the United States Court of Appeals for the Ninth Circuit, reported at 207 F. 2d 864, holding that the District Court did not have jurisdiction under the Administrative Procedure Act, jurisdiction being exclusively under the Suits in Admiralty Act; that pursuant to said decision of the Court of Appeals, the dismissal by the District Court for want of jurisdiction under the Administrative Procedure Act was sustained, and thereafter libelant met on several occasions with Clarence G. Morse, then general counsel of the Maritime Administration, and members of his staff, attempting to negotiate a settlement of this long-standing dispute; that upon the appointment of Clarence G. Morse, as Administrator of the Maritime Administration, further negotiations to settle the dispute were undertaken with the Administrator and his assistant general counsel, James L. Pimper; that [8] finally early in 1955 the Maritime Administration completed its audit and determined that the amount of its claim with respect to crew overtime aggregated $27,739.20.

XVII.

That in May, 1955, libelant again met with the assistant general counsel of the Maritime Administration, James L. Pimper, and members of his staff, and in said meeting libelant was advised that the matter would be presented to the Maritime Administrator and the Federal Maritime Board for final action; libelant was also advised that in the event it was determined to continue to press respondent's claim and libelant did not pay promptly, then in that event respondent's agency, the Maritime Administration, would effect collection by seizing funds due libelant from other agencies of respondent, employing the summary procedure of "offset."

XVIII.

That thereafter and on or about July 25, 1955, James L. Pimper, assistant general counsel of the Maritime Administration, advised libelant that the Maritime Administration demanded payment in full of its claims and stated that if such payment were not made within thirty days the sums would be recovered by the employment of the summary procedure of offset or an institution of litigation, and libelant is informed and believes and therefore alleges that respondent would have adopted the summary procedure of offset. See Exhibit "K" hereof.

XIX.

That being convinced that respondent would summarily seize funds of libelant in the hands of other

departments and agencies of respondent and/or summarily offset its claims against debts owing libelant; being informed and believing that such action by respondent would put libelant at great financial and legal disadvantage and would tarnish libelant's otherwise clean record as a supplier of petroleum products, the maintenance of which record was [9] important to libelant; and acting under the compulsion of respondent's coercion, duress and threats, libelant, for the purpose of preventing such seizure of its property, did pay said amount of crew overtime under protest, as evidenced by letter dated August 26, 1955, and attachment, being pages 1, 2 and 5, respectively, of Exhibit "K" hereof.

XX.

That this cause of action is brought to recover from respondent the amount of crew overtime unlawfully exacted from libelant as aforesaid.

XXI.

That, wherefore, as a direct and proximate result of the coercion, duress and compulsion of respondent, libelant has sustained damages in the amount of $27,739.20.

For a Second Cause of Action

XXII.

Libelant repeats and realleges as fully as though set forth herein at length each and every allegation contained in paragraphs I through XVIII, inclusive, of this libel.

XXIII.

That respondent's claims and demands, other than crew overtime, less credits, aggregated $6,418.82, making the total of respondent's claim $34,158.02, as evidenced by the schedule which is attached hereto as page 5 of Exhibit "K" hereof.

XXIV.

That being convinced that respondent would summarily seize funds of libelant in the hands of other departments and agencies of respondent and/or summarily offset its claims against debts owing libelant; being informed and believing that such action by respondent would put libelant at great financial and legal [10] disadvantage and would tarnish libelant's otherwise clean record as a supplier of petroleum products, the maintenance of which record was important to libelant; and acting under the compulsion of respondent's coercion, duress and threats, libelant, for the purpose of preventing such seizure of its property, did pay all of respondent's claims aggregating $34,158.02 under protest, as evidenced by letter dated August 26, 1955, and attachment, being pages 1, 2 and 5, respectively, of Exhibit "K" hereof.

XXV.

That on September 11, 1944, libelant and respondent entered into Renegotiation Contract number NOd-4643 for the fiscal year ending December 31, 1942, a copy of which is attached hereto, marked Exhibit "L" and by this reference made a part hereof; and subsequent thereto libelant and re-

spondent entered into additional Renegotiation Contracts numbered as follows:

Date	No.	For Fiscal Year Ending
3/18/46	414	12/31/43
10/15/46	516	12/31/44
3/27/47	586	12/31/45

XXVI.

That in determining the amount of profits to be eliminated under said contracts, the renegotiation agency of the respondent determined that libelant should be allowed to retain a profit of twenty-five cents per DWT per month for the charter operation and under said contracts eliminated all of libelant's profits under said charter operations in excess thereof; that in determining the amount to be so eliminated, the renegotiation agency relied upon the books, records and accounts maintained by libelant as respondent's time charter agent under Contract WSA 644, copy of which is attached hereto, marked Exhibit "M" and by this reference made a [11] part hereof, which said books, records and accounts had prior to renegotiation been audited and approved by auditors of the respondent.

XXVII.

That in said Renegotiation Contract NOd-4643 (paragraph 7 thereof), it is provided in part that:

> "* * * and this agreement shall not be modified by any officer, employee, or agent of the United States, and this agreement and any de-

termination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding; subject to the right of the Secretary of the Navy, or his duly authorized representative, to reopen renegotiation in his discretion at any time hereafter upon a showing of fraud or malfeasance or a wilful misrepresentation of a material fact, including a wilful omission to state a material fact required to make any representation of the Contractor not misleading."

That the other Renegotiation Contracts contained similar provisions.

XXVIII.

That approximately three years subsequent to the termination of the last of said Warshipoiltime charters, respondent herein reaudited said books, records and accounts notwithstanding the fact that the same had previously been audited and approved, the accounts settled, and libelant had been renegotiated as aforesaid, and respondent claimed that libelant was indebted to the respondent for certain items of overtime and other items, later determined to aggregate $34,158.02.

XXIX.

That such claims collected under duress by the respondent as aforesaid had the effect of annulling, modifying and setting aside the Renegotiation Contracts and of redetermining downward the [12] amount of profits which had been allowed libelant,

contrary to the provisions of the Renegotiation Contracts.

XXX.

That had such alleged indebtedness been timely asserted and paid prior to the renegotiation, the amount of alleged excessive profits eliminated thereby would have been reduced by exactly the same amount of said claim, and it follows, therefore, that the respondent had already received the amounts claimed, and the said $34,158.02 collected under duress by respondent has the effect of increasing the amount of alleged excessive profits eliminated notwithstanding that said Renegotiation Contracts provided that said contracts shall be "a final and conclusive determination of the excessive profits."

XXXI.

That as a direct and proximate result of the demands and duress of respondent herein and said payment under protest required thereby, respondent has been unjustly enriched under said charter parties in the amount of $34,158.02 and libelant has been damaged in the same amount.

XXXII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, said libelant prays that process in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against said United

States of America and that said respondent may be cited to appear and answer upon oath all and singular the matters aforesaid; that this Honorable Court will be pleased to decree judgment in favor of libelant for money had and received, exacted contrary to statute, regulation and contract, and for damages in the amount of $34,158.02, with interest and costs, and that said libelant may [13] have such other and further relief in the premises as in law and in justice it may be entitled.

/s/ DAVID GUNTERT,
Proctor for Libelant.

Duly verified. [14]

EXHIBIT K

Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

August 26, 1955.

Airmail
Maritime Administration,
U. S. Department of Commerce,
Washington 25, D. C.

Attention: James L. Pimper,
Assistant General Counsel.

Re: Manning Watch Overtime.
Your File: QM189:231.

Gentlemen:

Attached hereto please find Richfield Oil Corporation check No. 37498 in the amount of $34,-

158.02, representing payment under protest of various items totalling $33,658.02 set forth in the attached statement prepared by your District Comptroller's Office at San Francisco, together with $500.00 claimed to be additional crew's overtime shown on records heretofore destroyed.

This payment is protested on the following grounds:

A. As to the Entire Amount:

(1) No sums are due under terms and conditions of the charter parties.

(2) Richfield Oil Corporation is not indebted to the Maritime Administration because all accounts of operation under the several requisition charter parties have been subjected to renegotiation, and any sums which may have been due have already been paid. Said renegotiation was based upon the records and accounts previously audited and approved by the WSA, which the Maritime Administration now seeks to amend. Under said renegotiation, Richfield was allowed to retain 25 cents per dead weight ton as profit for the operation and was required to pay by way of cash or credit all sums in excess of 25 cents per dead weight ton. Had the charges which the Maritime Administration now asserts been timely asserted, the recovery by the Government under the renegotiation contracts would have been decreased by the amount of this payment under protest. It follows, therefore, that the Government has already

received any and all sums which it now claims are due.

(3) The renegotiation contracts constitute an accord and satisfaction of the accounts between the Government and Richfield, and, accordingly, no sums are due.

(4) This claim by the Maritime Administration amounts to a reopening of Richfield's renegotiation agreements, which is prohibited by the terms thereof except in the case of fraud or malfeasance or a wilful misrepresentation of the material fact, and no such showing has been or can be made.

B. As to the Crew Overtime:

(1) No sums are due the Maritime Administration for crew overtime because the War Shipping Administration, as a condition to Richfield's acceptance of the second disputes addendum, in an exchange of correspondence and wires in January, 1945, agreed that overtime should be settled on the basis of the then audited accounts. This claim is a breach of that agreement.

(2) No crew overtime is due the Maritime Administration under the terms and conditions of the charter parties involved.

C. As to the $500.00 Item:

(1) The sum is not due under the terms and conditions of the charter parties.

(2) This sum cannot be justified as the records have been destroyed, and none was due and pay-

able under the records previously audited and approved by WSA auditors.

Will you please see that this reaches the proper hands for further handling?

Yours very truly,

/s/ DAVID GUNTERT,
Attorney.

DG/sd
Atts.
CC: J. M. Foss.

U. S. Department of Commerce
Maritime Administration
Washington 25, D. C.

Address Reply to
Maritime Administration
And Refer to File No.
QM189:231

July 25, 1955.

Via Air Mail
Richfield Oil Corporation,
Richfield Building,
San Francisco 17, California.

Attention: David Guntert, Esq.
Subject: Manning Watch Overtime.

Dear Sirs:

Reference is made to your letter of May 24, 1955, and prior correspondence and conferences in respect to the captioned matter.

In view of the foregoing, we cannot make a departure in respect to your company from the common terms of settlement offered to and accepted by the other West Coast oil companies against whom the Administration has similar claims for manning watch overtime.

Accordingly, unless we receive word from your company within 30 days that you are prepared to accept settlement of the manning watch overtime on the 55-45 formula agreed to by the other West Coast oil companies and to accept the other WSA charter claims of the Administration in the abovementioned total sum of $34,158.02, the Administration will have no other recourse except to institute suit or effect set-off against sums due your company from the Government, as may be appropriate.

Very truly yours,

ELMER E. METZ,
Acting General Counsel;

By /s/ JAMES L. PIMPER,
Assistant General Counsel.

Statement Showing Amounts Due Maritime Administration From Richfield Oil Corporation
Under W.S.A. Contracts—Account Final Adjustment of Charter Hire and Off-Hire Certificates and Settlement of Crew Overtime on 45-55 Basis, Also Including Manning Watch Crew Overtime Under MCe Contracts

Vessel	WSA Contract	Unsettled Savings on Charter Hire	Wages	Subsistence	Arb. $15 Day Stores	Lay-Up Returns	Fuel-Water	Port Charges	Sub-Total	WSA Crew O/T on 45-55	MCc Manning Watch O/T	Grand Total
SS Agwiworld	1432R				371.20	2,018.21			2,389.41			2,389.41
SS Charles S. Jones	2131R		26.80	9.52	45.00		261.00	311.49	653.81		1,855.87	2,509.68
SS Huguenot	1433R	864.06			396.90		69.79		1,330.75			1,330.75
SS Kekoskee	1468R	529.03	41.44	15.00	377.00		22.24		984.71			984.71
SS Larry Doheny	1470R	(220.30)			380.00				160.50			160.50
SS Pat Doheny	1644R				180.00			232.54	412.54		970.41	1,382.95
SS Topila	1438R	2,012.90	4.08		281.00	1,413.67	144.81		3,856.56			3,856.56
		3,185.69	72.32	24.52	2,032.00	3,431.88	497.84	544.03	9,788.28		2,826.28	12,614.56
Refund due charterer (Crew O/T 45-55 basis)										24,247.00		24,247.00
Plus 55% recovered from Underwriters.										665.92		665.92
Disallowance of Port Charges												
Bill MA-SF 53-11-170	2,087.46											
Less Wash. Deduction	1,464.35											
Net. Wash. Revision	623.11											
Less O/T included in gross 45-55 study	299.48											
Net Port Charges (Kekoskee)	323.63							323.63	323.63			323.63
Less Savings Paid Charterer in error on Prior Time Def. Cert. on SS Charles S. Jones			(534.59)	(117.70)		(1,790.97)			(2,443.26)			(2,443.26)
Less Charter hire refund due owner on Pat Doheny-Makua Collision. off-hire Cert. No. 2		(1,749.83)							(1,749.83)			(1,749.83)
		2,435.86	(462.27)	(93.18)	2,032.00	1,640.91	497.84	867.66	5,918.82	24,912.92	2,826.28	33,658.02
									Added, Per Letter Dated July 25, 1955, From James L. Pimper			500.00
												$34,158.02

Prepared by District Comptroller's Office SF.

Receipt of copy attached.

[Endorsed]: Filed June 4, 1956.

[Title of District Court and Cause.]

EXCEPTIONS AND EXCEPTIVE ALLEGATIONS TO THE AMENDED LIBEL

Comes now respondent, United States of America, and excepts to the amended libel filed herein June 4, 1956, on the ground that the allegations set forth in the said amended libel are insufficient to state a cause of action within the jurisdiction of this Honorable Court in that the allegations of the amended libel clearly show that the claim of libelant is for recovery back of a voluntary payment made by libelant as consideration for compromise and settlement of disputed claims.

Exceptive Allegations

Libelant, in Articles IX through XV of its amended libel, together with exhibits attached thereto and referred to in the said articles, alleges the existence of disputes with respondent resulting in respondent's making claim against libelant in the sum of [59] approximately $75,000.

II.

Libelant, in Articles XVI, XVII, XVIII and XXIII of its amended libel, together with Exhibit "K" attached thereto and referred to in the said articles, alleges that demand was subsequently made upon libelant by respondent in the reduced amount of $34,158.02.

III.

The letter of July 25, 1955, from the Acting

[Title of District Court and Cause.]

EXHIBITS FOR ATTACHMENT TO EXCEPTIONS AND EXCEPTIVE ALLEGATIONS TO AMENDED LIBEL

EXHIBIT "AA"

QM189:231 September 22, 1954
File Copy

Via Air Mail
Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Attention: David Guntert, Esq.
Re: Manning Watch Overtime

Dear Mr. Guntert:

Further to our recent telephonic conversation in respect to settlement of the above-captioned matter.

Our local District Comptroller has advised that under the settlement terms agreeable to the Administration (namely, our acceptance of 100% items of overtime set forth in Article Seventh of the Second Disputes Addendum and 55% of all other overtime under the requisition time charters and your repayment of the actual amounts overpaid by the War Shipping Administration for crew overtime under the prior voluntary Maritime Commission time charters as presently audited) the amount to be paid to the Administration is $24,247.00 plus an undetermined amount for the overpayments under the

prior MCc charters. By letter dated September 9, 1954, Mr. Halen, our District Counsel, has transmitted to you a summary sheet prepared by the Office of the District Comptroller showing calculation of the above-stated figure of $24,247.00, in accordance with the above-stated settlement formula.

We are requesting the local District Comptroller to promptly report to us the amount due the Administration under the prior MCc charters. Mr. John Mason, our former District Counsel, has advised us that in previous discussions with you, you have indicated that about $2,000 is in dispute under the prior charters. As soon as we have received advices from the District Comptroller as to the exact sum due under the prior charters, we shall advise you.

As I understand your counter-proposal for settlement, you are willing to offer an amount somewhere between $20,000 and $24,427, (sic) providing the Administration gives a complete and full release, not only of the crew overtime claims, but of all other claims in favor of the Administration against your company.

This is to advise that the Administration cannot depart from the settlement formula for two fundamental reasons. In the first place, the settlement formula is the same as has been tendered to, and accepted by, the three other West Coast oil companies against whom the Administration has similar claims. Secondly, it is not customary for the Administration to give broad releases from liability in con-

nection with the settlement of an individual claim. As you realize, the war-time operations of the chartered vessels produced a multitude of claims in behalf of both owners and the charterer. Our records indicate that in addition to the crew overtime dispute under the requisition charters and the prior MCc charters, above mentioned, the Government has a claim of $2,087.46 covering unsettled disallowances in connection with off-hire certificates. A review of this latter item shows that a revision of this claim downward may be in order and we have requested our Comptroller's office to re-examine this item. In addition, advices received from our District Comptroller indicate that the Administration also has a claim for an undetermined amount for insurance and general average recoveries pursuant to Article Eighth of the Second Disputes Addendum. Our files also indicate that at one time you had requested a release from certain bunkering contracts, information as to which is lacking in our files. In addition to the foregoing, there may be other claims in favor of the Administration arising out of the charter operations and we are requesting our local District Comptroller to prepare a full report as to the status of all charter claims for and against the Government.

In view of the foregoing, we shall appreciate your advices as to whether or not your company is agreeable to enter into a final settlement of crew overtime claims under the requisition and prior MCc time charters in accordance with the settlement formula,

set forth above, leaving to separate settlement any other open claims between the charterer and the owner.

We trust that upon further consideration your company will determine that settlement on the above-stated basis represents a fair and reasonable disposition of the crew overtime claims of the Administration. In any event, we shall appreciate your early advices in order that we may take appropriate action in closing out the subject claims.

Very truly yours,

/s/ CLARENCE G. MORSE,
General Counsel.

JTarian/mjt
cc: 762, 200, 231, 424, 453, 20004, 204.

EXHIBIT "BB"

Richfield Oil Corporation
Richfield Building, Los Angeles 17, California

QM189
File

September 30, 1954

Clarence G. Morse, Esq., General Counsel
Maritime Administration
Department of Commerce
Washington 25, D. C.

Dear Mr. Morse:

Re: QM189:231
Manning Watch Overtime

Thank you very much for your letter of September twenty-second in which you refer to Mr. Halen's

letter of September ninth and the possibility of our accepting the compromise offer which I understand other companies have agreed to accept.

This offer has been conditioned upon an additional payment by Richfield of some $4,000 to effect settlement of manning watch overtime under MCc charters and the dispute concerning off-hire certificates. Also we would not be able to pay under protest and sue for recovery.

Richfield is in the unique position of being the only vessel owner who has had its time charter business with the Maritime Commission and WSA renegotiated. This puts your claim against us on an entirely different footing than your claims against other operators. Additionally we have on file in the Court of Claims an action for just compensation based on the theory that the time charters and various reductions in charter rates were executed by Richfield under economic duress. That action was filed within the statutory period, and disposition of the case has not been determined pending final outcome of our negotiation for an administrative settlement of your claim.

When these operations were being renegotiated, we were allowed a profit of 25 cents per DWT per month based upon the books of account which kept on those operations and which prior to renegotiation had been audited and approved by your auditors. Had these disputed items been paid by Richfield, the amount of the Government's renegotiation

recovery would have been reduced by that same amount. It follows, therefore, that the Government has already received full payment of these claims as well as any others it might assert in the future.

We are mindful of the costs and delays involved in litigation, and we would much prefer an administrative settlement with you. It is worth something to us to get rid of these claims, to avoid litigation, and to be certain that no future claims will be asserted. Accordingly we would be willing to pay a substantial sum and dismiss our action in the Court of Claims for a complete release.

We feel, however, that under the circumstances we should not be held to the same bases upon which you have reached agreement with other operators.

May I have your advice as to whether or not you are interested in working out such a settlement.

Yours very truly,

/s/ DAVID GUNTERT,
Counsel.

DG:BP

[Stamped]: Received Oct. 4, 1954.

EXHIBIT "CC"

QM189:231

October 29, 1954

Via Air Mail
Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Attention: David Guntert, Esq.
Re: Manning Watch Overtime

Dear Mr. Guntert:

Reference is made to your letter, dated September 30, 1954, and our recent telephonic conversation in respect to the above subject.

Your above-mentioned letter states that you are mindful of the costs and delays involved in litigation, that you would much prefer an administrative settlement, and that you are willing to pay a substantial sum and dismiss your action in the Court of Claims for just compensation for a complete release.

We too are interested in an amicable, administrative settlement, particularly in view of the fact that there does not appear to be any substantial financial disparity between your company's views and the Government's position.

However, for reasons set forth in our letter of September 22, 1954, the Government is not in a position to give an over-all release. You will readily appreciate that in view of the additional claims

therein referred to, and possibly additional claims in favor of the Government yet undeveloped under the contracts in question, it is not possible for the Government to furnish such a release.

The present outstanding claims in favor of the Government, in addition to the proposed settlement for manning watch overtime in the sum of $24,247.00 and an estimated $2,000.00 under the prior Maritime Commission charters, include a claim for off-hire disallowances which our Comptroller's office now advises is in the sum of $623.11, in lieu of the original figure of $2,087.46, and an undetermined sum for insurance and general average recoveries pursuant to Article Eighth of the Second Disputes Addendum. Insofar as your reference to renegotiation is concerned, you are well acquainted with our position and the position of the Comptroller General on this subject. We have no further comments to make except to refer to the recent decision of the Court of Appeals of the Ninth Circuit in your suit against the Government in which the Court stated:

> "We have considerable difficulty in perceiving just what appellant's theory may be with respect to its right to attack the renegotiation of its profits or to question the effect of the renegotiation agreement which it executed."

In view of the foregoing, we trust that we may receive word from you that you are prepared to settle the manning watch overtime on the same settlement formula as has been reached by the Administration with the other west coast companies, leav-

ing to separate settlement any additional open claims between the parties.

Very truly yours,

/s/ CLARENCE C. MORSE,
General Counsel.

JTarian/mjt
cc: 762, 200, 231, 424, 453, 20004, 204.

Affidavit of service by mail attached.

[Endorsed]: Filed July 13, 1956.

[Title of District Court and Cause.]

ANSWER TO RESPONDENT'S EXCEPTIONS AND EXCEPTIVE ALLEGATIONS TO THE AMENDED LIBEL

Comes Now libelant Richfield Oil Corporation and answers respondent's Exceptions and Exceptive Allegations to the Amended Libel as follows.

Concerning Respondent's Exceptions

Respondent's sole exception is that "the allegations of the amended libel clearly show that the claim of libelant is for recovery back of a voluntary payment made by libelant as consideration for compromise and settlement of disputed claims." In support of its exception, respondent makes certain exceptive allegations and presents to the Court certain documents by which respondent hopes to establish a bar to avoid trial of the issues on their merits.

The amended libel alleges all of the elements of involuntary payment, and all of those allegations are admitted for the purpose of considering respondent's exceptions to the amended libel. [71] Moreover, verified allegations herein contained answering respondent's exceptive allegations refute those exceptive allegations in toto; show that respondent's exceptive allegations contain distortions of fact, assumptions and conclusions; and clearly show that one of the grounds establishing the involuntary nature of the payment is that the payment was made under an express reservation of the right to pay under protest and sue for recovery. This would have been proved at time of trial but is presented here in answer to the exceptive allegations.

Answer to Respondent's Exceptive Allegations

Respondent's exceptive allegations are for the most part mere conclusions and attempt to show that the original claim was $75,000; that such claim was compromised for $34,158.02; that libelant agreed to the compromise; that libelant paid it "voluntarily" and now seeks to recover its compromise payment.

Respondent's exceptive allegations just do not stand up for the following reasons, which are facts that will be proved at time of trial on the merits:

1. The $75,000 figure is cited in the amended libel simply as a recitation of the history of the case. It was the estimated amount named in the complaint in a prior case brought under the Admin-

istrative Procedure Act at a time long before the audit was complete and is based upon the Maritime Administration's auditors' own estimates at that time.

2. Prior to the litigation brought under the Administrative Procedure Act, libelant had dealt primarily with the office of the District Counsel of respondent at San Francisco, but libelant's counsel had also had conferences with respondent's attorneys in Washington, D. C. When the decision of the Court of Appeals for the Ninth Circuit became final in the litigation under the Administrative Procedure Act, libelant's counsel telephoned John T. Halen, District Counsel, and advised him that libelant would not [72] appeal the decision and requested that respondent's auditors complete their audit and determine how much was actually claimed so that libelant could pay under protest and sue for recovery to prevent seizure of its funds through the offset procedure which had previously been threatened by the District Counsel's office. The amount of the claim had not previously been determined. There ensued a series of letters dated January 27, 1954, January 28, 1954, February 3, 1954, May 10, 1954, August 31, 1954, and September 9, 1954, which are marked Exhibits "N," "O," "P," "Q," "R" and "S." respectively, attached hereto and by this reference made a part hereof. The 50/50 formula referred to in said letters is the formula contained in the Second Disputes Addendum. This alternative formula contained in the Second Disputes Adden-

dum, was available to but rejected by libelant at the time it entered into an agreement with respondent to sign the Second Disputes Addendum, as alleged in the amended libel. The letter dated May 10, 1954, was the first offer to change the 50/50 split referred to in the Second Disputes Addendum to a 55/45 split and was tendered on the basis that "settlement on that basis would necessarily preclude payment under protest and recourse to the courts for recovery thereof."

3. This offer was not acceptable to libelant because, as alleged in the amended libel, libelant had made an agreement with respondent to allow overtime to stand as previously audited and because if any money were due respondent, it had been recovered in the renegotiation processes. Moreover, libelant, with the full knowledge of respondent, was seeking a means whereby all possible claims asserted then or to be asserted thereafter would be finally resolved either by a general release for a consideration or by litigation on the merits.

4. After the correspondence attached as Exhibits "N" through "S," inclusive, and Exhibits "AA," "BB" and "CC" attached to the [73] exceptive allegations, negotiations were carried on in Washington, D. C., by conferences with Clarence G. Morse, General Counsel, prior to his appointment as Administrator of the Maritime Administration and thereafter with James L. Pimper, Assistant General Counsel. These negotiations culminated in the final demand set forth in Mr. Pimper's letter of July 25,

1955, which is attached to the amended libel as Exhibit "K" thereof. Shortly before expiration of the thirty day period set forth in said letter from Mr. Pimper, counsel for libelant telephoned Mr. Pimper and advised that if respondent would recede from its position stated by the District Counsel, that payment under protest would not be accepted, libelant would pay the claim under protest to prevent the threatened offset and would institute suit to recover. This Mr. Pimper agreed to do, whereupon, reserving the right to sue for recovery, libelant made the payment under protest to prevent seizure of its property.

5. Promptly thereafter and on November 30, 1955, libelant instituted suit herein to recover the payment pursuant to the reservation of right to do so as aforesaid and upon the grounds set forth in said protest.

6. Libelant is informed and believes and therefore alleges that some of the other oil companies have indicated to the Maritime Administration that they would pay the demands made upon them but that at the time this action was filed, and as of the date hereof, so far as libelant knows, not one has paid such demand and all are awaiting the outcome of this litigation.

7. Libelant is the only one of the West Coast oil companies involved in Maritime Administration claims of the nature described in the amended libel that had entered into a settlement agreement con-

cerning the division of overtime at the time the Second Disputes Addendum was executed, and libelant is the only one of said companies involved that has had its requisition time charter [74] operations renegotiated.

Wherefore, libelant prays that respondent's Exceptions to the Amended Libel be overruled and that respondent be required to answer herein.

/s/ DAVID GUNTERT,
Proctor for Libelant.

Duly verified. [75]

EXHIBIT N

U. S. Department of Commerce
Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Address reply to
Maritime Administration
and Refer to File No.
P22-2:20004

January 27, 1954

Airmail
David Guntert, Esq.
Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Dear Mr. Guntert:

Re: Manning Watch Overtime

Reference is made to your long distance telephone call of even date wherein you advised that your cor-

poration will not file an appeal from the decision handed down by the Ninth Circuit Court of Appeals.

You requested that I have certain bills on the Kekoskee revised. I regret to state, however, that I was unable to ascertain in what manner you wished these bills revised. The poor telephone connection gave me just enough information to confuse me and upon reading my notes after you had hung up, I found that I was unable to make much sense of them. I would therefore appreciate your forwarding your request in writing in order that I may begin immediate action upon the claim.

Very truly yours,

/s/ JOHN T. HALEN,
District Counsel.

cc: 40004-WFH

EXHIBIT O

January 28, 1954

Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Attention of Mr. John T. Halen,
District Counsel

Gentlemen:

Re: P22-2:20004
Manning Watch Overtime

With reference to our telephone conversation Wednesday and your memorandum of the twenty-

seventh, the bills previously rendered on the Kekoskee covered an additional year's period beyond the cutoff date in May, 1944. I believe your auditors are aware of this.

The other point was that in rendering your bills in the first instance, you advised that we had the option of paying the charges as billed or paying additional charges on the basis of 50 per cent of the overtime exclusive of the 100 per cent items.

My suggestion was that your auditors compute what you consider is due on the latter basis, and upon our receipt of them, we will check them and in all probability make payment under protest as a preliminary step to suing for recovery unless some satisfactory compromise settlement based upon such revised billing can be worked out.

Yours very truly,

DAVID GUNTERT.

DG:BP
cc. Mr. Joe Weber

EXHIBIT P

U. S. Department of Commerce
Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Address Reply to
Maritime Administration and Refer to File No.
P22-2:20004

David Guntert, Esq. February 3, 1954
Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Dear Mr. Guntert:

Re: Manning Watch Overtime

Receipt is acknowledged of your letter of January 28, 1954, relative to the manning watch overtime. You have requested that our auditors review the bill rendered on the Kekoskee and compute our charges upon the basis of your company paying additional charges of 50% of the overtime exclusive of the 100% items.

Your letter has been referred to the District Comptroller's office for the above-mentioned purpose and has also been referred to Washington for their advices as to whether some satisfactory compromise settlement can be worked out.

Very truly yours,

/s/ JOHN T. HALEN,
District Counsel.

cc: 42004-H.S. w/in.ltr
cc: 4004-WFH "
cc: 230

EXHIBIT Q

U. S. Department of Commerce
Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Address Reply to
Maritime Administration
and Refer to File No.
P22-2:20004

May 10, 1954

Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Attn: David Guntert, Esq.

Dear Mr. Guntert:

Re: Manning Watch Overtime

Reference is made to your letter of January 28, 1954, on the above matter, suggesting that the Administration compute what we consider is due to the Administration as the result of overpayments made to your company on Requisition Time Charters covering vessels owned by Richfield. You have suggested that this computation be made on the basis of the Administration splitting the overtime, exclusive of the 100% items, 50-50 with Richfield. You have stated that after checking these figures your company will in all probability make payment under protest as a preliminary step to suing for recovery

unless some satisfactory compromise settlement based upon a revised billing can be worked out.

I should first of all like to apologize for the long delay in replying to yours of January 28. I assure you that this delay was due to the heavy pressure of work not only upon this office but also upon our auditors.

There is enclosed herewith a summary sheet which has been compiled by the Office of the District Comptroller which contains not only the amounts that have already been paid to your company but also a computation as to the amounts the Administration considers to be due to it under the so-called 50-50 split provided for by the Second Disputes Addendum. You will note that settlement on this basis would call for a refund by your company of the sum of $32,472.38. You will also note that this summary pertains only to an overtime study conducted on Requisition Time Charters. We are still awaiting information from Washington concerning sums due under the prior voluntary Maritime Commission Time Charters.

With respect to any other compromise settlement which may be available to your company in this matter, I am authorized by the Admiralty Counsel in Washington to advise you that the Administration is prepared to accord to your company settlement on the same terms applicable to other companies. It is expected that this settlement will be placed in final form for approval at Washington at

an early date. Under the formula or terms of the settlement the Administration will accept 100% items pursuant to the Second Disputes Addendum and all other overtime under the Requisition Time Charter is to be adjusted by the Administration assuming 55% thereof and the owner assuming 45%. The owner will also repay the actual amounts overpaid by War Shipping Administration for crew overtime under the prior voluntary Maritime Commission Time Charters as presently audited.

If your company is interested in arriving at a settlement of this matter in accordance with the aforementioned formula, I will be only too glad to forward to you a summary similar to the one enclosed but adjusted on a 55-45% basis. Settlement on that basis necessarily would preclude any payment under protest and recourse to the courts for recovery thereof.

Very truly yours,

/s/ JOHN T. HALEN,
District Counsel.

cc: 40004
cc: 43004-FA4-H.S.
cc: 231-2cc

EXHIBIT R

U. S. Department of Commerce
Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Address Reply to
Maritime Administration
and Refer to File No.
P22-2:20004

August 31, 1954

Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Attn: David Guntert, Esq.

Dear Mr. Guntert:

Re: Manning Watch Overtime

Please refer to my letter of May 10, 1954, on the above matter wherein this office advised you as to the terms of settlement the Maritime Administration is prepared to accord to your company in the above matter.

My principals in Washington have advised me that formal settlement of claims involving the other companies interested in the manning watch overtime question has been held up pending receipt of advices from your company indicating whether you desire or do not desire to make a compromise settlement on the same terms. Accordingly, any information you can provide this office concerning your

probable intentions in this matter will be sincerely appreciated in order that I may advise my Washington office of the present status of negotiations.

Very truly yours,

/s/ JOHN T. HALEN,
District Counsel.

cc: 231, 40004

EXHIBIT S

U. S. Department of Commerce
Maritime Administration
180 New Montgomery Street
San Francisco 5, California

Address Reply to
Maritime Administration
and Refer to File No.
P22-2:20004 September 9, 1954

Richfield Oil Corporation
Richfield Building
Los Angeles 17, California

Attention: David Guentert, Esq.

Dear Mr. Guentert:

Re: Manning Watch Overtime

Reference is made to your long distance call of September 8 with respect to the settlement of the Manning Watch Overtime question. You will recall that at first you indicated that it was the intention of your company to request a billing from the Maritime Administration for settlement on a 50-50 basis, and that your company would pay under protest and file suit for recovery of the amount so paid.

As I indicated to you in that telephone conversation, the Administration will consider a compromise settlement on the basis that the Administration will accept 100% of the items pursuant to the second disputes addendum, and all of the other overtime under the requisition time charter to be adjusted by the Administration assuming 55% thereof, and the owner assuming 45%. Under this settlement formula the owner will also repay the actual amounts over-paid by WSA for crew overtime under the prior voluntary Maritime Commission time charters as presently audited.

I am enclosing herewith a summary sheet on Requisition Time Charter Crew Overtime Study, wherein all amounts allocated to each vessel are set forth, and wherein is set forth the figures of settlement which would be applicable on a 55-45 settlement.

You stated in your telephone call that your company might view the proposed 55-45 settlement favorably, provided the Administration could give you a complete and full release of all other claims held by the Administration against your company. As I indicated, settlement under those terms would necessarily have to be approved by Washington, this office not being authorized to handle negotiations up to that stage. In line with your suggestions, therefore, I agree that it would probably be best for you to communicate your counter proposal directly to Washington, and specifically to the General Counsel for the Maritime Administration, Clarence G. Morse, Esq.

I should like to point out, however, that I have received previous instructions from Washington that the overtime settlement would be subject to the closing of unpaid off-hire disallowances in the sum of $2,087.46 as per billing of the District Comptroller dated June 4, 1953. If you will refer to that billing you will note that it is a composite of items applying against the SS Agwiworld (WSA 1432-R; SS Kekoskee (WSA 1468-R); SS Topila (WSA 1438-R). This would necessarily be at least one of the items which you would desire to be covered by the release mentioned in our conversation. Therefore, it would be up to my prinicpals in Washington to decide whether they would wish to accept your counter proposal.

In order to assist you in any manner possible in settling this claim, I shall immediately notify the office of the General Counsel as to the general nature of your telephone call in order that they may be more readily prepared to reply to your proposal once it has been received.

Very truly yours,

/s/ JOHN T. HALEN,
District Counsel.

Enclosure

P.S. In the event this matter is taken up with Washington directly, it will be appreciated if copies of correspondence can be made available to this office in order that our file may be kept current.

/s/ J. T. HALEN.

Summary Sheet on Requisition Time Charter Crew Overtime Study—Richfield Oil Corporation

Vessel	1 Total O/T	2 Less Extra Complement: Due Owner	3 Less Extra Complement: Paid Owner	4 Less Extra Complement: Total	5 Net O/T Subject to Split	6 55% Payable by MA	7 Amount Paid by M. A.: Subject to Split	8 Amount Paid by M. A.: Extra Comp.	9 Col. 7 & 8 Total Paid Split + 100%	10 Less Amount of Manning Watch Paid in Error	11 MA Should Have Paid Col. 7-10
Agwiworld	$ 29,713.84	251.17	744.16	995.33	28,718.51	15,795.18	21,701.33	744.16	22,445.49	13,283.94	8,417.39
Charles S. Jones	13,499.40	106.58	455.05	561.63	12,937.77	7,115.77	11,303.05	455.05	11,758.10	5,541.77	5,761.28
Huguenot	14,155.85	132.18	187.00	319.18	13,836.67	7,610.17	7,869.50	187.00	8,056.50	3,705.01	4,164.49
Kekoskee	32,713.16	394.93	403.73	798.66	31,914.50	17,552.98	21,331.38	403.72	21,735.10	11,115.26	10,216.12
Larry Doheny	5,498.55	.....	.....	.....	5,498.55	3,024.20	3,931.00	.....	3,931.00	1,855.42	2,075.58
Pat Doheny	38,411.85	368.85	757.95	1,126.80	37,285.05	20,506.78	27,241.02	757.95	27,998.97	15,691.92	11,549.10
Topila	35,363.63	348.75	698.33	1,047.08	34,316.55	18,874.10	22,951.36	698.33	23,649.69	13,351.51	9,599.85
	$169,356.28	1,602.46	3,246.22	4,848.68	164,507.60	90,479.18	116,328.64	3,246.21	119,574.85	64,544.83	51,783.81

From Statement above Maritime Administration Paid $116,338.64 of Total O/T less 100% items which is $116,328.64 or 70.32%

$164,507.60

On a Correct Audit Basis Maritime Administration should have paid $51,783.81 of Total O/T less 100% items which is $ 51,783.81 or 31.42%

$164,507.60

As on a Correct Audit Basis Maritime Administration paid less than 60%. Owner can bring himself under provisions of 2nd. Disputes Addendum and claim a 50-50 split, or (on negotiation) a 45-55%

A—On a Correct Audit Basis Owner must pay manning watch of	$ 64,544.83	
Less Unpaid O/T due on 100% Items	1,602.46	$ 62,942.37
On Amounts subject to Split, Maritime Administration Paid	116,328.64	
B—On a 55-45 settlement, Maritime Administration pays 55% of $164,507.60 or	90,479.18	
Amount Overpaid		25,849.46
Less Amount due Owner on 100% unpaid items		1,602.46
Amount due Maritime Administration under Requistition Charter Settlement		$ 24,247.00

Receipt of copy acknowledged.

[Endorsed]: Filed August 20, 1956.

desired Libelant might file an amended Libel, and the Proctor for Libelant advising that upon stipulation of the parties the exceptions and exceptive allegations and the answer of Libelant to the exceptions and exceptive allegations would be a part of the record on appeal that Libelant did not desire to file an Amended Libel.

Now Therefore It is Hereby Ordered, Adjudged and Decreed that the exceptions of Respondent to the Amended Libel be, and the same are hereby sustained, and the Amended Libel be, and the same is, hereby dismissed.

Dated: August 27, 1956.

/s/ BEN HARRISON,
United States District Judge.

Approved as to form:

/s/ DAVID GUNTERT,
Proctor for Libelant.

[Endorsed]: Filed August 27, 1956.

Docketed and entered August 28, 1956. [102]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the respondent, the United States of America, and its proctors, Laughlin E. Waters, United States Attorney; Max F. Deutz, Assistant United States Attorney; and Keith R. Ferguson, Special Assistant to the Attorney General:

Notice is hereby given that Richfield Oil Corporation, the libelant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Decree Dismissing Amended Libel herein entered on the 28th day of August, 1956.

/s/ DAVID GUNTERT,
Proctor for Libelant.

[Endorsed]: Filed September 17, 1956. [103]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Libelant-Appellant herein presents the following points upon which it claims the Court erred:

1. In granting respondent's Exceptions to the Amended Libel.

2. In dismissing the Amended Libel.

/s/ DAVID GUNTERT,
Proctor for Libelant-Appellant.

[Endorsed]: Filed September 17, 1956. [104]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 106, inclusive, contain the original

Amended Libel in Personam;

Exceptions and Exceptive Allegations to the Amended Libel;

Exhibits "AA2," "BB," "CC," for Attachment to Exceptions and Exceptive Allegations to Amended Libel;

Answer to Respondent's Exceptions and Exceptive Allegations to the Amended Libel;

Decree Dismissing Amended Libel;

Notice of Appeal;

Statement of Points on Appeal;

Designation of Contents of Record on Appeal;

all, in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit in the above case.

I further certify that my fees for preparing the foregoing record amount to $2.00, which has been paid by appellant.

Witness my hand and seal of the said District Court this 24th day of September, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk,
By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15296. United States Court of Appeals for the Ninth Circuit. Richfield Oil Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed September 25, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.